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No. 85-1477

In The

Supreme Court of the United States

October Term, 1985

JANET LUCY, Personal Representative of the Estate of RAYMOND LUCY, Deceased; and JANET LUCY, DLORAH LUCY, and ANGELA LUCY, Individually,

Petitioners,

-vs-

AMOCO OIL COMPANY, a Maryland corporation,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIÆ* — *AND* — BRIEF FOR SERVICE STATION DEALERS OF AMERICA, INC. AS *AMICUS CURIÆ*

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIÆ*

The Service Station Dealers of America, Inc. hereby moves for leave to file the attached Brief *Amicus Curiæ* pursuant to Rule 36, consent to the filing of this Brief having been withheld by Respondent.

The Service Station Dealers of America, Inc. represents over 60,000 retail gasoline service station dealers and their families in every state of this Union. As such, we are intimately familiar with the problems, practices and procedures of operating such a business under the Petroleum Marketing Practices Act, 15 U.S.C. 2801 *et seq.*

The implications of the question at issue in the instant case fall far beyond the ramifications of whether it was proper to terminate one particular dealership on the basis of the death of the franchisee. The broader implications of this question are that the Petroleum Marketing Practices Act was enacted as remedial legislation to

protect independent service station dealers from the oppressive power of oil companies in their ability to terminate or non-renew service station franchises.

The issue of whether the death of a franchisee is a permissible reason for automatic termination of a service station franchise under the PMPA becomes important because death of the franchisee was not a reason specified in the Act as a permissible reason for termination or non-renewal, yet the oil companies have used the death of a franchisee as a reason for automatic termination and have been consistently upheld by the Courts. Thus, the protections for independent business persons sought to be provided by this Act have been removed.

The Service Station Dealers of America, Inc. is particularly interested in ensuring that service station dealers remain independent, are able to exercise independent business judgment without undue pressure from large oil companies, and to otherwise implement and strengthen the protections against capricious and discriminatory terminations for which the PMPA was enacted. This issue takes on significance in a stream of commerce all across this country, hence having implications far beyond the import of this immediate case.

WHEREFORE, it is respectfully prayed that this Motion for Leave to File the attached Brief *Amicus Curiæ* be granted.

Respectfully submitted,

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Dated: April 10, 1986

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-vs-

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BRIEF FOR SERVICE STATION DEALERS OF AMERICA, INC. AS *AMICUS CURIÆ*

INTEREST OF THE SERVICE STATION DEALERS OF AMERICA, INC.

The interest of the Service Station Dealers of America, Inc. is set forth in its Motion for Leave to File this Brief *Amicus Curiæ*.

SUMMARY OF ARGUMENT

The Petroleum Marketing Practices Act, 15 U.S.C. 2801 *et seq.*, sets forth specific reasons and guidelines for permissible automatic termination of a service station franchise. Death of a named franchisee is not enumerated in this Act as a permissible ground for automatic termination of a service station franchise. This omission

was clearly intended by Congress, which held lengthy hearings on this issue and had full opportunity to include death of franchisee as a stated reason for automatic termination.

Court decisions interpreting this issue have concluded that although death is not enumerated, it is a permissible reason for termination. Each one of these decisions has ignored clear Congressional intent in the language of this Act, and they should be reversed by this Court.

ARGUMENT

In the case of *Lucy, et al.* v *Amoco Oil Company,* the Plaintiffs have petitioned the United States Supreme Court to grant certiorari to the U.S. Court of Appeals for the 6th Circuit to address the issue of whether the death of a service station franchisee is a proper ground for the automatic termination of a service station franchise under the Petroleum Marketing Practices Act, 15 U.S.C. 2801 *et seq.* The Service Station Dealers of America, Inc. hereby joins the Petitioners and requests in the strongest possible terms that this Honorable Court review this important issue for the reasons contained in this Brief.

The Service Station Dealers of America (SSDA), formerly known as the National Congress of Petroleum Retailers (NCPR), is the trade association representing over 60,000 retail service station dealers and their families. The issue presented in this case, whether death of the franchisee is grounds for termination of a franchise under the PMPA, is one of grave concern to our members and their families, who are often intimately involved in operating the service station as a family business.

The NCPR fought for several years to obtain national franchise legislation to protect dealers and their families. During this time, Professor Harold Brown, the leading national authority on franchise law, noted,

> "In the Nation's second largest industry, the major oil firms have gasoline station dealers in virtual bondage, hinged on the constant threat that their short-term contracts will not be renewed unless they submit to burdensome franchisor-imposed practices . . . It is generally conceded that the gasoline stations' situation is almost hopeless and offers a prime example of the worst abuses in franchising . . . The major oil companies have proven almost impervious to attack." Brown, *Franchising — a Fiduciary Relationship*, 49 Tex. L. Rev. 650 (1971)

As a result of the efforts of the NCPR, the Petroleum Marketing Practices Act or "dealer day in court" bill became law in 1978. The PMPA broke new ground in many areas, particularly in the areas of granting of preliminary injunctions and shifting of the burden of proof to the franchisor to provide proper foundation for termination or non-renewal. The reason that the PMPA took this approach was because of the recognition in Congress that "an individual dealer served by either Shell or Exxon is at a tremendous disparity with respect to his ability to litigate issues of franchise termination or non-renewal, when confronted with the type of litigation staff you (major oil company) can afford to finance." Hearings on H.R. 130 Before the Subcomm. on Energy and Power of the House Comm. on Interstate and Foreign Commerce, 95th Cong., 1st Session (1977), remarks of Bill Demarest, counsel to the Sub-Committee.

The Petroleum Marketing Practices Act was established for a number of reasons which not only relate to protect-

ing the independence of service station franchisees but also protect the normal flow of business throughout the course of the nation. In that regard, the PMPA set forth twelve events which interpret the phrase "an event which is relevant to the franchise relationship and as a result of which termination of the franchise or non-renewal of the franchise relationship is reasonable." 15 U.S.C. 2802(c). Significantly, Congress chose to leave the death of the franchisee out of this list of examples of events under which termination would be reasonable.

In the 94th Congress, a version of PMPA, H.R. 13000, passed the House but died in the Senate due to lack of time. H.R. 13000 included a provision that grounds for termination of a PMPA franchise included occurrence of an event that made termination reasonable. Franchisors were not happy with the vagueness of this provision and requested that a laundry list of such events be included as guidance for the courts. The version of H.R. 13000 which passed the House explicitly listed death as a relevant event justifying termination (Hearings on H.R. 130 at 222).

Congressman John Dingell, the chairman of the Sub-Committee on Energy and Power, and chief sponsor of the PMPA, introduced H.R. 130 the following year, which version did not include death on the "laundry list" of events the occurrence of which would make termination or non-renewal reasonable. This omission was attacked by every major oil company testifying on the bill, including Amoco (Hearings on H.R. 130 at 350), Mobil (Hearings on H.R. 130 at 362), Texaco (Hearings on H.R. 130 at 373), Chevron (Hearings on H.R. 130 at 318, 319), Sohio (Hearings on H.R. 130 at 320), and Gulf (Hearings on H.R. 130 at 222).

Service station dealers, on the other hand, preferred that death not be listed, because frequently service

stations were and still are owned and operated by an entire family, employing the husband, the wife and frequently the children. However, most oil companies require that only one individual's name be placed on the franchise agreement as the franchisee with whom they will deal. Most oil companies additionally employ preprinted franchise agreements which provide, among other things, that upon the death of the named franchisee, the franchise relationship shall be terminated. Therefore, the sole franchisee of an operation faces pressures to comply with the marketing practices of the franchisor or be faced with the danger that his wife and children will return from his funeral and find the locks changed on the station.

In the final version of PMPA, the dealer's rights to assign the franchise were preserved (this was also sought to be precluded by the oil companies), and death was not included as a ground for automatic termination under the Act. Congress did not look to whom the individual named on the lease was; rather, Congress looked to the economic reality of the situation and allowed the wives, sons, and daughters of dealers to continue in the business built-up, often over a course of years, by family members.

The balance struck by Congress is far different from that which has been struck by the Courts. The Courts which have addressed this issue have uniformly held that despite the absence of death as an enumerated reason for termination of a service station franchise, the death of a named franchisee is an event relevant to the franchise relationship and therefore, termination is reasonable. *Kostantas* v *Exxon*, 663 F2d 605 (CA 5, 1981), *cert. den.*, 456 U.S. 1009; 102 S. Ct. 2302; 73 L Ed 2d 1305 (1982); *Blankenship* v *Knox Oil Company*, 548 F Supp 789 (E.D. Tenn., 1982). Probably the most far-reaching

decision in this string of decisional authority is the case of *Iannuzzi* v *Exxon*, 572 F Supp 716 (D.N.J., 1983), which involved an action by a deceased dealer's widow. Mrs. Iannuzzi was a joint owner of the service station premises, and had been a full co-owner and operator of the service station in every regard with the exception of having her name on the franchise agreement. Mrs. Iannuzzi's husband's name was the sole name on the franchise agreement, and when he died, despite her extensive involvement in the operation of the business, the Court upheld Exxon's termination of the franchise.

Clearly, decisions such as this have a significant impact upon the reasonable expectations of the parties that the franchise relationship will be a continuing one. *Brach* v *Amoco Oil Company*, 677 F2d 1213 (CA 7, 1982).

Thus, one of the express purposes of the PMPA, to protect franchisee independence which may be undermined by the use of threatened termination to compel compliance with marketing policies of the franchisor, has been defeated. *Brach, id.*

The numerous family owned and operated service station operations across this country are thus threatened by the uncertainties of the death of one family member. The policies of the oil companies in executing their franchise agreements make any attempts by these other family members to protect their interest by becoming co-franchisees an impossibility. Thus, even though Congress rejected the enumeration of death of the franchisee as a permissible reason for termination, the oil companies have succeeded in effectively inserting death into the PMPA through decisional authority which has consistently held death is an event which makes termination of the franchise relationship reasonable.

CONCLUSION

This trend of decisional case law in interpretation of the PMPA has led commentators to conclude that the Congressional intent in enactment of PMPA has been frustrated. *See e.g.*, Comment, *Judicial Interpretation of the PMPA, Conflict and Diversity*, 32 Emory L.J. 273 (1983). In the eight years since the PMPA was passed, this Court has not heard a case under the Act. On behalf of the nation's 60,000 and more service station dealers and their families, SSDA strongly urges this Court to grant the Petition for Certiorari, and to reverse the trend of decisional case law interpretations cited above. SSDA also desires the opportunity to file a more detailed *amicus curiae* Brief and leave to participate in oral argument.

Respectfully submitted,

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Dated: April 10, 1986